# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C.

In the Matter of	)	
	)	
Applications of Deutsche Telekom AG,	)	WT Docket No. 12-301
T-Mobile USA, Inc., and MetroPCS	)	
Communications, Inc.	)	
	)	
For Consent To Assign or Transfer Control	)	
of Licenses and Authorizations	)	
	)	

To the Chief, Wireless Telecommunications Bureau

## COMMENTS OF THE COMMUNICATIONS WORKERS OF AMERICA

George Kohl Debbie Goldman Communications Workers of America 501 Third Street, NW Washington, D.C. 20001 (202) 434-1194

Kevin J. Martin Monica S. Desai Patton Boggs LLP 2550 M Street, NW Washington, D.C. 20037 (202) 457-7535

Counsel to the Communications Workers of America

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### COMMENTS OF THE COMMUNICATIONS WORKERS OF AMERICA

#### I. INTRODUCTION.

The Communications Workers of America ("CWA") hereby submits the following Comments regarding the applications filed by Deutsche Telkom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. (collectively, the "Applicants") in the above-referenced proposed Transaction. The Applicants position this merger as one of growth and opportunity. CWA seeks to ensure that this transaction translates into a story of growth and opportunity for employment. The Transaction, therefore, presents the Federal Communications Commission ("FCC") with an opportunity to grow jobs and ensure quality service in the United States.

Unless the FCC specifically imposes conditions protecting U.S. employment, however, the proposed Transaction could result in a significant loss of jobs. CWA is concerned that references to post-merger "efficiencies" and "transaction-specific savings" through a variety of "network and

See Deutsche Telekom AG, T-Mobile USA, Inc. and MetroPCS Communications, Inc. Seek FCC Consent to the Transfer of Control of PCS Licenses and AWS-1 Licenses and Leases, One 700 MHz License, and International 214 Authorizations Held by MetroPCS Communications, Inc. and by T-Mobile USA, Inc. to Deutsche Telekom AG, Public Notice, WT Docket No. 12-301, DA 123-1730 (rel. Oct. 26, 2012).

non-network synergies," may be euphemisms for reducing employment and firing workers. This threat is very real given both Applicants' demonstrated records of eliminating or outsourcing jobs – including to other countries – in the interest of cost-cutting.

Consistent with precedent in previous merger proceedings, the FCC must consider the proposed Transaction's potentially detrimental impact on U.S. employment and on service quality. The FCC can protect U.S. jobs and quality service by conditioning approval of the proposed Transaction on enforceable commitments to maintain and grow the current number of non-management employees in the U.S. Specifically, the FCC should not approve the proposed Transaction absent the following enforceable Conditions:

- 1. No U.S. employees will lose their jobs as a result of the proposed Transaction;
- 2. Network maintenance will continue to be provided by U.S. employees; and
- 3. Work previously sent offshore by T-Mobile and MetroPCS will be returned to the U.S.

# II. THE PROPOSED TRANSACTION PRESENTS THE FCC WITH THE OPPORTUNITY TO PRESERVE AND GROW U.S. JOBS, OR TO ALLOW THOUSANDS OF EMPLOYEES TO LOSE THEIR JOBS AT THE EXPENSE OF SERVICE QUALITY.

The impact of a merger on U.S. employment is part of the FCC's public interest analysis.<sup>3</sup> Indeed, the FCC has repeatedly confirmed that commitments to grow jobs in the U.S. represent a

<sup>&</sup>lt;sup>2</sup> Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 12-301, Description of Transaction, Public Interest Showing, and Related Demonstrations, 39-44 (filed Oct. 18, 2012) ("Description of Transaction").

<sup>&</sup>lt;sup>3</sup> See, e.g., Applications of AT&T and Deutsche Telekom AG, WT Docket No. 11-65, Order and Staff Analysis and Findings, 26 FCC Rcd 16184, 16293, ¶ 259 (2011) ("AT&T/T-Mobile Staff Analysis and Findings") ("As part of its public interest analysis, the Commission historically has considered employment-related issues such as job creation . . ."); Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses, MB Docket No. 10-56, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4330, ¶ 224 (2011) ("We also note the Applicants' representations that additional investment and innovation that will result from the transaction will in turn promote job creation and preservation."); Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and

public interest benefit to be taken into account in the review of proposed mergers.<sup>4</sup> The FCC also has considered a merger's impact on service quality as part of its public interest analysis, finding that job cuts resulting in reductions in service quality are not in the public interest.<sup>5</sup> If the positive impact a merger may have on employment is a public interest benefit, an expected loss of thousands of jobs at the expense of service quality must be a public interest factor as well.

Here, the proposed Transaction threatens to harm the public interest by directly resulting in the loss of as many as 10,000 jobs at a time of persistently high unemployment in the U.S. Moreover, these job cuts could further harm the public interest by significantly lowering the postmerger company's quality of customer service. If approved, the Transaction will combine T-Mobile, which currently employs approximately 30,000 employees to serve roughly 33.2 million customers,<sup>6</sup>

Authorizations, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14029-30, ¶¶ 168-69 (2005) ("Sprint/Nextel Order") (considering job growth claims as part of FCC analysis); Applications of Puerto Rico Telephone Authority and GTE Holdings (Puerto Rico) LLC for Consent to Transfer Control of Licenses and Authorization, File No. 03373-03384-CL-TC-98, Memorandum Opinion and Order, 14 FCC Rcd 3122, 3148, ¶¶ 57-58 (1999) (finding that GTE's pledge not to make any involuntary terminations, except for cause, of PRTC workers employed as of a certain date would benefit the public interest).

<sup>&</sup>lt;sup>4</sup> See, e.g., AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, Memorandum and Opinion and Order, 22 FCC Rcd 5662, Appendix F (2007) ("AT&T/BellSouth Order") (finding that a commitment to provide high quality employment opportunities in the U.S. by repatriating jobs previously outsourced outside the U.S. would serve the public interest).

<sup>&</sup>lt;sup>5</sup> See AT&T/T-Mobile Staff Analysis and Findings at ¶ 231 (lowering the number of representatives per customer and reducing the level of service that customers would experience "are, of course, not a public benefit . . ."); Applications of Ameritech Corp. and SBC Communications, Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines, CC Docket No. 98-141, Memorandum and Order, 14 FCC Rcd 14712, 14947, ¶ 567(1999) ("Ameritech/SBC Order") ("Evidence in the record reveals that SBC has increased its commitments to improving service quality by hiring more employees . . .").

<sup>&</sup>lt;sup>6</sup> T-Mobile employs approximately 30,000 employees. The non-management employees work in 17 call centers, 1,900 retail stores, and as technicians maintaining and optimizing cell sites. *See* Deutsche Telekom, "Whenever, Whatever. Wherever: The 2011 Financial Year" (DT Annual Report), p. IV. The annual report reflects 34,518 total employees at T-Mobile as of Dec. 31, 2011. After the displacement of 3,300 workers due to the closure of seven call centers in June 2012 and another job reduction in Summer 2012, CWA estimates the total workforce of T-Mobile to be about 30,000 employees.

with MetroPCS, which directly employs approximately 3,700 employees to service roughly 9.3 million customers.<sup>7</sup> To improve their competitive position, the Applicants state their intent to pursue a post-merger business strategy of capitalizing on various "network and non-network synergies," a euphemism that often means job loss or reduction in employment standards.

The Applicants project non-network synergies of approximately \$1 billion NPV.<sup>9</sup>

Specifically, the Applicants explain that the post-merger company will combine back-office operations.<sup>10</sup> The post-merger company will also achieve similar "efficiencies" in customer support.<sup>11</sup> Further, the Applicants anticipate reducing their non-network capital expenditures.<sup>12</sup>

CWA notes that although the Applicants' claim that these synergies "will allow the company to grow, potentially increasing employment opportunities," these claims seem to fly in the face of the immediate job cuts that are likely necessary to achieve those synergies. The Applicants' claims can become a reality only with specific, enforceable commitments. As the FCC has previously found, vague, speculative claims of future job growth are insufficient to substantiate a public interest benefit absent supporting evidence. 14

<sup>&</sup>lt;sup>7</sup> See MetroPCS SEC Form 10-K for the year ending Dec. 31, 2011.

<sup>&</sup>lt;sup>8</sup> See Description of Transaction at 39-44. Specifically, the Applicants contend that their post-merger business plan projects over \$6-7 billion in total synergies on a net present value ("NPV") basis, which will in turn yield approximately \$1 billion in projected annual savings by 2017. Description of Transaction at Attachment 1, Declaration of Peter Ewans, ¶ 14.

<sup>&</sup>lt;sup>9</sup> See Description of Transaction at 42-44.

<sup>&</sup>lt;sup>10</sup> See Description of Transaction at 43.

<sup>&</sup>lt;sup>11</sup> Description of Transaction at 43.

<sup>&</sup>lt;sup>12</sup> See Description of Transaction at 44.

<sup>&</sup>lt;sup>13</sup> Description of Transaction at 44.

<sup>&</sup>lt;sup>14</sup> See Sprint/Nextel Order at ¶ 130 ("[T]he claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the Applicants, they are required to provide sufficient evidence supporting each benefit claim so that the Commission can verify the likelihood and magnitude of the claimed benefit . . . speculative benefits that cannot be verified will be discounted or dismissed."); id. at ¶¶ 168-69 ("The

The types of synergies touted by the Applicants are very likely to translate into net job losses. Indeed, in its review of the proposed AT&T/T-Mobile merger just last year, the FCC explained that "[a]pplicants typically ask [the Commission] to consider *job reduction* as a cost-reducing efficiency, consistent with general business practices in which transactions lead to the elimination of positions that are no longer required post-merger. Not surprisingly, to date, there are no examples of Applicant's [sic] meeting the standard and receiving credit for creating merger-specific jobs."<sup>15</sup>

The FCC further explained that, in assessing the effect of a proposed transaction on direct U.S. jobs, "the central question is whether the merged entity will support a larger or smaller number of domestic positions than the Applicants on a stand-alone basis." Here, the proposed Transaction at hand threatens to harm the public interest by resulting in potentially thousands of job cuts as a result of the Applicants' projected post-merger "synergies." These jobs cuts would harm the public interest not only by firing employees at a time of persistently high unemployment in the U.S., but also by resulting in significant reductions in the quality of customer service provided post-merger. The FCC has specifically found that lowering the number of representatives per customer "could reduce the level of service that customers would experience . . . Reductions in customer service quality are, of course, not a public benefit; rather, they raise the quality-adjusted price of wireless service." T-Mobile's and MetroPCS's plan to achieve greater "efficiencies" in back-office operations and customer support is likely to have this exact result: job cuts that will result in fewer employees per customer and a lower quality of service to the detriment of the public interest. This

Applicants assert that this new service will generate economic growth and jobs in the U.S. . . . we find it significant that the Applicants have not attempted to quantify the benefits of the proposed merger as it relates to the 2.5 GHz band . . . we conclude that any public interest benefits of this merger on the commercial development of the 2.5 GHz band are too speculative to assess at this time.").

<sup>&</sup>lt;sup>15</sup> AT&T/T-Mobile Staff Analysis and Findings at n.671 (emphasis added).

<sup>&</sup>lt;sup>16</sup> AT&T/T-Mobile Staff Analysis and Findings at ¶ 262 (emphasis added).

<sup>&</sup>lt;sup>17</sup> AT&T/T-Mobile Staff Analysis and Findings at ¶ 231.

result is especially likely given that MetroPCS currently has an employee-to-customer ratio less than half of T-Mobile's current employee-to-customer ratio. This difference in employee-to-customer ratios increases the probability that T-Mobile will reduce employment post-merger to cut costs, resulting in a reduction in customer service quality.

This threat of job losses and reduced service quality is particularly acute given both MetroPCS's and T-Mobile's demonstrated records of eliminating or outsourcing jobs outside the U.S. in order to cut costs. MetroPCS already outsources its entire customer care, billing, payment processing and logistics operations. A portion of its vendors' call centers are located outside the U.S., including in Mexico, Antigua, Panama, and the Philippines, as part of the company's stated business strategy of outsourcing its call centers to cut operational costs. And soon after its failed attempt to merge with AT&T, T-Mobile closed seven of its 24 call centers and displaced 3,300 employees. The work was sent to call centers in foreign countries. This is a practice that is likely to accelerate as a result of the proposed Transaction if T-Mobile adopts MetroPCS's practice of outsourcing its entire customer care operation, including to foreign workforces.

Given the Applicants' plan to pursue a "low-cost" post-merger business strategy tailored to cost-conscious customers, and both companies' demonstrated records of eliminating and outsourcing jobs outside the U.S. in order to cut costs, the proposed Transaction presents a

<sup>&</sup>lt;sup>18</sup> See MetroPCS SEC Form 10-K for the fiscal year ended Dec. 31, 2011, 9.

<sup>&</sup>lt;sup>19</sup> See "MetroPCS Employs Telvista's Outsourced Contact Center Solutions," PR Newswire, April 16, 2012, available at http://www.prnewswire.com/news-releases/metropcs-employs-telvistas-outsourced-contact-center-solutions-76978292.html.

<sup>&</sup>lt;sup>20</sup> See "T-Mobile to Close Call Centers Employing 3,300 Workers," IT World, March 23, 2012, available at http://www.itworld.com/mobile-wireless/261536/t-mobile-close-call-centers-employing-3300-workers.

<sup>&</sup>lt;sup>21</sup> See Department of Labor Employment and Training Administration, Certification Regarding Eligibility to Apply for Worker Adjustment Assistance (July 11, 2012) (finding that T-Mobile "has acquired from a foreign country services like or directly competitive with services supplied by the workers" laid off from T-Mobile call centers in Allentown, Pennsylvania, Fort Lauderdale, Florida, Frisco, Texas, Brownsville, Texas, Lenexa, Kansas, Thornton, Colorado, and Redmond, Oregon).

dangerous threat to U.S. jobs absent specific conditions protecting employment and service quality in the U.S. Post-merger job cuts would be particularly harmful to the public interest considering that many of T-Mobile's call centers are located in mid-size cities that cannot afford additional job cuts at a time of high unemployment.<sup>22</sup>

Consistent with its review of prior proposed transactions, the FCC should disregard the Applicants' speculative claim of potential future employment opportunities and take steps to protect the public interest by ensuring that the proposed Transaction does not lead to a loss of jobs or reduction in service quality.

III. THE COMMISSION SHOULD REQUIRE THAT THE APPLICANTS MAKE SPECIFIC, ENFORCEABLE COMMITMENTS TO MAINTAIN OR INCREASE THEIR CURRENT NUMBER OF NON-MANAGEMENT EMPLOYEES IN THE U.S. AS A CONDITION OF APPROVAL.

The FCC should require, as a condition on approval of the proposed Transaction, that the Applicants make specific, enforceable commitments to retain or increase their current number of non-management employees in the U.S. post-merger. Such commitments were proposed by the applicants in the proposed AT&T/T-Mobile merger. Specifically, the applicants in the AT&T/T-Mobile merger made the following three commitments that: (i) T-Mobile non-management employees whose job functions were no longer required because of the merger would be offered another position in the combined company;<sup>23</sup> (ii) the merger would not result in any job losses for U.S.-based wireless call center employees of T-Mobile or AT&T who were on the payroll when the merger closed; and (iii) AT&T would bring back 5,000 wireless call center jobs to the U.S. that were,

T-Mobile operates call centers in Hoover, Alabama; Colorado Springs, Colorado; Tampa, Florida; August, Georgia; Meridian, Idaho; Wichita, Kansas; Oakland, Maine; Springfield, Missouri; Albuquerque, New Mexico; Salem, Oregon; Charleston, South Carolina; Chattanooga, Tennessee; Nashville, Tennessee; Mission, Texas; Richmond, Virginia; and Bellingham, Washington.

<sup>&</sup>lt;sup>23</sup> AT&T non-management employees were already protected with "job offer guarantee" language in the AT&T/CWA collective bargaining agreements.

at the time, outsourced to other countries.<sup>24</sup> Further, the FCC has found that commitments to increase jobs can serve to mitigate concerns regarding post-merger service quality.<sup>25</sup>

The FCC should require that the Applicants in the Transaction at hand make similar commitments to ensure current employees' job security and to maintain quality of service. Doing so would be consistent with the FCC's recognition that commitments to grow domestic U.S. jobs represent a public interest benefit. For example, in its review of the proposed merger between AT&T and BellSouth, the FCC accepted the companies' commitment to provide high-quality employment opportunities in the U.S., finding that a specific commitment to repatriate by a specific date 3,000 jobs that were outsourced by BellSouth outside the U.S. would serve the public interest. In accordance with this precedent, the FCC should ensure that the Applicants go beyond a vague, speculative claim of potential employment opportunities and require the following enforceable Conditions:

- 1. No U.S. employees will lose their jobs as a result of the proposed Transaction;
- 2. Network maintenance will continue to be provided by U.S. employees; and
- 3. Work previously sent offshore by T-Mobile and MetroPCS will be returned to the U.S.

Such conditions are particularly warranted in light of the Applicants' record of cutting jobs and outsourcing positions outside the U.S. in the interest of cost-cutting.

 $<sup>^{24}</sup>$  See AT&T/T-Mobile Staff Analysis and Findings at  $\P$  263.

<sup>&</sup>lt;sup>25</sup> See Ameritech/SBC Order at ¶ 567 (finding that commitments to improving service quality by hiring more employees, along with other commitments, sufficiently mitigated the service quality concerns raised in the record).

<sup>&</sup>lt;sup>26</sup> See AT&T/BellSouth Order at Appendix F; see also AT&T/T-Mobile Staff Analysis and Findings at ¶ 263 (discussing the Commission's consideration of job-related commitments proposed by T-Mobile and AT&T).

#### IV. CONCLUSION.

Consistent with precedent established in previous merger reviews, the FCC must consider, as part of its public interest analysis, the impact of the proposed Transaction on U.S. jobs and service quality. To protect the public interest, the FCC should condition any approval on enforceable commitments from the Applicants to maintain and grow their current number of employees in the U.S.

George Kohl Debbie Goldman Communications Workers of America 501 Third Street, NW Washington, D.C. 20001 (202) 434-1194 Kevin J. Martin Monica S. Desai Patton Boggs LLP 2550 M Street, NW Washington, D.C. 20037 (202) 457-7535

Respectfully submitted,

Counsel to the Communications Workers of America

Dated: November 26, 2012

#### CERTIFICATE OF SERVICE

I, Yosef Getachew, hereby certify that on this 26th day of November 2012, I caused true and correct copies of the foregoing Comments to be served by electronic mail to the following:

Nancy J. Victory Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 nvictory@wileyrein.com Counsel to Deutsche Telekom AG, and T-Mobile USA, Inc.

Carl Northrop
Telecommunications Law
Professionals PLLC
875 15<sup>th</sup> Street, NW, Suite 750
Washington, DC 2005
cnorthrop@telecomlawpros.com
Counsel to MetroPCS

David Hu Broadband Division Wireless Telecommunications Bureau Federal Communications Commission david.hu@fcc.gov Kathy Harris Mobility Division Wireless Telecommunications Bureau Federal Communications Commission kathy.harris@fcc.gov

Kate Matraves
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
catherine.matraves@fcc.gov

David Krech
Policy Division
International Bureau
Federal Communications Commission
david.krech@fcc.gov

Jim Bird
Office of General Counsel
Federal Communications Commission
TransactionTeam@fcc.gov

Best Copy and Printing, Inc. fcc@bcpiweb.com

/s/ Yosef Getachew